

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,		
Plaintiff,		
v.		2:10-CR-23-VEH-TMP
TOBY JARRAD PHILLIPS,		
Defendant.		

ORDER

This matter is before the court on the Defendant's Motion to Suppress (doc. 14) and the Defendant's Amended Motion to Suppress (doc. 17).¹ The court has considered the entire file in this action, together with the Magistrate Judge's Report and Recommendation, and has reached an independent conclusion that the Magistrate Judge's Report and Recommendation is due to be adopted and approved as supplemented hereby.

Although the court agrees with and adopts the factual findings of the

¹ Also shown as pending is the Defendant's Motion for Leave to File Reply and Motion to Strike. (Doc. 20). Although the Magistrate Judge did not reference the portion of this document that sought leave to file a reply, he implicitly granted it because he clearly considered such reply in expressly granting the motion to strike that was part of the reply. (See Report and Recommendation, doc. 21, p. 5, fn. 1). The Government has not objected to the Report and Recommendation. Therefore, the court hereby **GRANTS** the Defendant's Motion for Leave to File Reply and Motion to Strike. (Doc. 20).

Magistrate Judge, the court agrees with the Defendant that the Magistrate Judge's Report and Recommendation fails to address, in its Conclusions of Law, the Defendant's arguments based on *Arizona v. Gant*, 129 S. Ct. 1710 (2009). Therefore, the court hereby supplements the Conclusions of Law portion of the Magistrate Judge's Report and Recommendation. Further, for the reasons set out hereinafter, the court finds that *Arizona v. Gant* is not applicable to the facts of this case and denies the Motions to Suppress.²

Defendant argues that "any and all evidence obtained by Birmingham Police from the Defendant's vehicle ... and any and all statements made by the Defendant pertaining to such illegally seized evidence" (Motion to Suppress, doc. 14, p. 1), are due to be suppressed because the admittedly "warrantless search of the cab of the vehicle was unreasonable in that the circumstances of the arrest indicate that the Defendant was not in any position to access the vehicle at the time of the search and the vehicle did not contain evidence of the offense of arrest, all in violation of Defendant's Fourth Amendment rights. See in this regard, *Arizona v. Gant*, 129 S. Ct. 1710 (2009)." (*Id.*). However, this court finds that *Arizona v. Gant* simply does

² Because the court is merely supplementing the Conclusions of Law portion of the Report and Recommendation to address the Defendant's argument under *Arizona v. Gant*, and otherwise adopts the Report and Recommendation, the court will not address the Defendant's other arguments set out in his Objections (doc. 22), other than to state that such other arguments have been considered and are hereby rejected.

not apply to the facts of this case.

Arizona v. Gant explicated the law regarding warrantless searches *incident to arrest*. The facts of this case undisputably show that the search of Defendant's vehicle was an *inventory* search. The Defendant was the only person in the vehicle. The vehicle was on a public road. Once the officers decided to arrest the Defendant, the vehicle had to be towed and impounded. It is Birmingham Police Department policy to inventory, prior to impoundment, all vehicles that are towed at the direction of the police.

Having concluded, for the reasons stated by the Magistrate Judge, that the Defendant's warrantless arrest was lawful under Alabama law and, alternatively, that even if the Defendant's arrest was not lawful under Alabama law it did not violate the Fourth Amendment to the Constitution, and having concluded, for the reasons stated by the Magistrate Judge, that "the inventorying of the vehicle occurred pursuant to an existing policy, [and] not as a mere excuse to conduct a search" (Report and Recommendation, doc. 21, p. 8), the police inventory search of the vehicle prior to its impoundment also did not violate the Constitution.

As supplemented hereby, the court hereby **ADOPTS** and **APPROVES** the findings and recommendation of the Magistrate Judge as the findings and conclusions of the court. In accord with the recommendation and this supplementation, the

Defendant's Motions to Suppress (docs. 14 and 17) are hereby **DENIED**.

DONE and **ORDERED** this 3rd day of September, 2010.

A handwritten signature in black ink, appearing to read "VE Hopkins", is written above a horizontal line.

VIRGINIA EMERSON HOPKINS

United States District Judge